

Supporting Statement
Proposed Amendments to the Energy Labeling Rule
16 C.F.R. Part 305
(OMB No. 3084-0069)

The Federal Trade Commission (“FTC” or “Commission”) proposes amendments to the Commission’s Energy Labeling, 16 CFR 305, to require labeling regarding energy usage by portable air conditioners.

(1) Necessity for Collecting the Information

The FTC’s Energy Labeling Rule (“Rule”), issued pursuant to the Energy Policy and Conservation Act (EPCA),¹ requires energy labeling for major household appliances and other consumer products to help consumers compare competing models. When first published in 1979, the Rule applied to eight product categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission has since expanded the Rule’s coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.

For the instant rulemaking, the Commission proposes amendments to the Energy Labeling Rule to require labels for portable air conditioners. The proposed amendments are designed to: (1) ensure the Rule’s labeling requirements are consistent with EPCA, which mandates that FTC labels reflect applicable DOE test procedures when available; and (2) improve the Rule by providing consumers with energy information about additional products not covered previously.

(2) Use of the Information

The primary purpose of the proposed information requirements is to allow consumers to comparison shop for energy-efficient portable air conditioners.

(3) Consideration of Using Improved Technology to Reduce Burden

The proposed amendments permit the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable.

(4) Efforts to Identify Duplication

Commission staff have not identified any other federal statutes, rules, or policies that would duplicate the proposed Rule.

¹ 42 USC 6291 et seq.

(5) Efforts to Minimize Burden on Small Organizations

Although the EPCA requires the Rule to apply to all manufacturers of covered products, the Commission is seeking comment about minimizing impact on small businesses. While some manufacturers subject to the Rule's requirements may be small businesses, staff believes that everything consistent with EPCA's requirements has been done to minimize compliance burden.

(6) Consequences of Conducting the Collection Less Frequently

Not applicable; there is no flexibility within EPCA's framework to "collect" less frequently the information contained in the proposed new labeling requirements.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The proposed amendments' information collection requirements are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

The Commission previously sought comment on the proposed amendments in a 2015 NPRM.² The estimates are based on this input as well as FTC consultations with DOE staff. In addition, the Commission is seeking public comment on the proposed new labeling requirement and the associated PRA burden analysis.

(9) Payments and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The information to be disclosed is of a routine business nature. It is collected and disseminated by the industry among its membership and made available to the public. No personal or sensitive information is involved nor is any commercially confidential information included.

² 80 Fed. Reg. 67,351. The comments received in response to the 2015 NPRM are here: <https://www.ftc.gov/policy/public-comments/initiative-601>. The comments included: Association of Home Appliance Manufacturers (AHAM) (#00016); CSA Group (#00007); California Investor Owned Utilities (California IOUs) (#00019); Earthjustice ("Joint Commenters") (#00018); NSF International (#00005); and Plumbing Manufacturers International (PMI) (#00006). Of these, only the AHAM comment addressed the FTC's Paperwork Reduction Act ("PRA") burden analysis in the NPRM. The AHAM comment is discussed further in response to items (8) and (12) of this Supporting Statement.

(12) **Estimated Annual Hours Burden and Associated Labor Cost**

Total Incremental Burden of the Proposed Rulemaking: 3,178 hours

Total Associated Labor Cost: \$67,988

Burden estimates below are based on Census data, DOE figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. The FTC estimates that there are about 150 basic models of portable air conditioners (*i.e.*, units with essentially identical physical and electrical characteristics). In addition, FTC staff estimates that there are 45 portable air conditioner manufacturers and 1,000,000 portable air conditioner units shipped each year in the U.S.³

Reporting: The Rule requires that manufacturers of covered products annually submit a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR Part 429. In lieu of submitting the required information to the Commission, manufacturers may submit such information to DOE directly via the agency's Compliance Certification Management System, available at <https://regulations.doe.gov/ccms>, as provided by 10 CFR 429.12. Because manufacturers are already required to submit these reports to DOE, FTC staff estimates that any additional burden associated with provide the information to the FTC is minimal.

FTC staff estimates that the average reporting burden for manufacturers of portable air conditioners will be approximately 15 hours per manufacturer. Based on this estimate, the annual reporting burden for manufacturers of portable air conditioners is **675 hours** (15 hours × 45 manufacturers).⁴

Labeling: The proposed amendments would require that manufacturers include EnergyGuide labels portable air conditioners. EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only input the energy consumption figures derived from testing. In addition, most companies use automation to generate labels that do not change from year to year.

FTC staff estimates that the time to incorporate the required information into labels and label covered products is five hours per basic model. Accordingly, staff estimates that the approximate annual burden involved in labeling covered products is **750 hours** [150 basic models × 5 hours].

³ See 81 FR 22514, 22516 (April 18, 2016).

⁴ In earlier comments, AHAM (#681-00012) estimated that the data entry involved in filing reports with the FTC is not particularly burdensome, but estimated that other tasks involved in reporting (such as performing the required testing and gathering information) could take as long as 40 hours per manufacturer. As noted above, however, testing and reporting are required and accounted for in DOE regulations. As a result, staff estimates that the primary burdens associated with reporting are due to DOE requirements.

Testing: Manufacturers of portable air conditioners must test each basic model they produce to determine energy usage, but the majority of tests conducted are required by DOE rules. As a result, it is likely that only a small portion of the tests conducted are attributable to the Rule's requirements. In addition, manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. FTC staff estimates that manufacturers will require approximately 36 hours for testing of portable air conditioners,⁵ and that 25% of all basic models are tested annually due to the Rule's requirements. Accordingly, the estimated annual testing burden for portable air conditioners is **1,368 hours** ((150 basic models × 25%) × 36 hours).

Recordkeeping: The Rule also requires manufacturers of covered products to retain records of test data generated in performing the tests to derive information included on labels. See 16 CFR 305.21. The FTC estimates that the annual recordkeeping burden for manufacturers of portable air conditioners will be one minute per basic model to store relevant data. Accordingly, the estimated annual recordkeeping burden would be **3 hours** (150 basic models × 1 minute).

Online and Retail Catalog Disclosures: Staff has estimated that there are approximately 400 online sellers of products covered under the Rule who are subject to the Rule's catalog disclosure requirements, as well as an additional 100 sellers who offer covered products through paper retail catalogs. Staff has previously estimated that covered online and catalog sellers spend approximately 17 hours per year to incorporate relevant product data for products that are currently covered by the Rule. Staff estimates that the portable air conditioner requirements will add one additional hour per year in incremental burden per manufacturer. Staff estimates that these additions will result in an incremental burden of **400 hours** (400 sellers × one hour annually).

Total Associated Labor Cost: \$67,988

Staff derived labor costs by applying estimated hourly wages to the burden hours described above.⁶ In calculating labor costs, staff assumes that test procedures are conducted by skilled technical personnel at an hourly rate of \$28.37, and that recordkeeping, labeling, and reporting generally are performed by clerical personnel at an hourly rate of \$16.24.

⁵ In its 2015 comments, AHAM estimated manufacturers would require 32 hours per model for testing and up to 4 hours for preparing the test data. AHAM Comment, #681-0016.

⁶ These labor cost estimates are derived from the Bureau of Labor Statistics figures in "Table 1. National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018," available at: <https://www.bls.gov/news.release/ocwage.t01.htm>.

Based on the above estimates, the total annual labor cost is derived as follows:

Activity	Burden Hours Per Year	Wage Category/ Hourly Rate	Total Annual Labor Cost
Reporting	675	Data Entry/Information Processing (\$16.24)	\$10,962
Labeling	750	Data Entry/Information Processing (\$16.24)	\$12,180
Testing	1,350	Engineering technicians (\$28.37)	\$38,300
Recordkeeping	3	Data Entry/Information Processing (\$16.24)	\$50
Online and Catalog disclosures	400	Data Entry/Information Processing (\$16.24)	\$6,496
			\$67,988

(13) Estimated Annual Capital or Other Non-labor Costs

Manufacturers are not likely to require any significant capital costs to comply with the proposed amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on \$.03 per label, is \$30,000 (1,000,000 × \$.03).

(14) Estimated Cost to Federal Government

Staff believes that the cost to the FTC for administering the proposed Rule changes will be *de minimis*. Accordingly, FTC staff retains the previous estimate of \$126,834 per year as the cost to the Federal Government for implementing the Rule. This estimate is based on the assumption that one-half attorney work year and half of a legal technician work year will be expended.

(15) Program Changes/Adjustments

The proposed amendments will result in an estimated additional 3,178 burden hours, annualized, and cumulative of all affected manufacturers, \$67,988 in labor costs, and \$30,000 in capital/non-labor costs.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.